

Fraud Costs Texas Millions

Fraud costs the Texas workers' compensation system millions of dollars each year. Employers, employees, insurance carriers, and Texas consumers pay the cost of fraud in lost jobs and profit, lower wages and benefits, and higher costs for services and premiums.

The Texas Workers' Compensation Commission's Office of Investigations works with numerous special investigation units to deter fraud by assisting in the prosecution of those who commit fraud. These units include state and federal law enforcement, other regulatory agencies, and insurance carrier special investigation units.

Investigations often lead to prosecution and recovery of money gained through fraudulent schemes. Fraud can be committed by employers, employees, health care providers, attorneys, insurance agents, and others.

What Is Fraud?

Fraud occurs when a person knowingly or intentionally conceals, misrepresents, and makes a false statement to either deny or obtain workers' compensation benefits or insurance coverage, or otherwise profit from the deceit. The key to conviction is proving in court that the misrepresentation or concealment occurred knowingly or intentionally.

Premium fraud and benefit fraud are the most common types of workers' compensation fraud.

Premium fraud is usually committed by an employer who misrepresents the amount of payroll or classification of employees, or who attempts to avoid a higher insurance risk modifier by transferring employees to a new business entity rated as a lower risk category.

Benefit fraud is usually committed by:

- a worker who works full time at an unreported job and draws benefits when he or she is supposed to be unable to work, or when a worker fakes an injury;
- a health care provider or attorney who assists the worker in fraudulent schemes, or participates in double billing or billing for services not provided.

Fraud Indicators

Fraud indicators do not mean fraud has occurred, but they may require a closer review of the claim or application.

Employer fraud indicators include but are not limited to:

- classification codes not consistent with duties normally associated with the employer's type of business, for example, a construction company that reports mainly clerical classifications
- payroll information on the insurance application inconsistent with payroll reported to the Texas Workforce Commission (formerly Texas Employment Commission, TEC)
- much larger premium paid for the previous year's policy
- small payroll reported by a large company or employee leasing company
- frequent addition and cancellation of coverage, especially if several business entities appear to be owned or controlled by the same person or group.

Employee fraud indicators include but are not limited to:

- injuries that have no witness other than the worker
- injuries occurring late Friday or early Monday
- injuries not reported until a week or more after they occur
- injuries occurring before a strike or holiday, or in anticipation of lay off or termination
- injuries occurring where the worker would not usually work
- injuries not usually occurring in the particular job description, for example, a secretary injured when lifting a heavy object
- worker observed in activities inconsistent with the reported injury
- worker history of workers' compensation claims
- conflicting diagnosis from subsequent treating doctors
- any evidence of working elsewhere while drawing benefits.

Attorney/health care provider fraud indicators include:

- receiving bills or explanation of benefits for services from health care providers, insurers or attorneys that seem unnecessary or fictitious
- "boilerplate" medical reports, or reports that are merely copies of previously submitted reports
- treatment dates on holidays for non-emergency situations
- bills from a health care provider or attorney that present an unreasonable amount or hours per day
- complaints from the worker that the attorney is "never" available although the attorney files fee affidavits for services
- attorney relationship with a health care provider that appears to be a partnership in handling workers' compensation claims.

Reporting Fraud

If you have evidence of fraudulent activity, provide the evidence to your local district attorney or to the Texas Workers' Compensation Commission at 512-804-4703. Claimants, subclaimants, carriers or an employer who has contested compensability should immediately request a benefit review conference. To request a benefit review conference, call the field office handling the workers' compensation claim.

Preinvestigation

The Commission's Office of Investigation receives numerous fraud referrals a week. Each referral must be evaluated to determine which referrals are investigated. This evaluation process includes:

- determining if probable cause exists to indicate a violation-if not, the case is closed
- where probable cause exists, calculating the overall impact of the case to the workers' compensation system, including deterrence, publicity, and the amount of fraud
- establishing the cost effectiveness of an investigation and the likelihood of successful prosecution
- assigning selected cases to an investigator for review.

Penalties

Criminal. If an investigation establishes criminal fraud, the local district attorney may begin prosecution. Workers' compensation fraud involving amounts of \$1,500 or more in benefits or premiums is a felony punishable by fines, orders for restitution, and imprisonment. If the amount is below \$1,500, the action is a Class A misdemeanor punishable by fines, orders for restitution and imprisonment.

Administrative. The Commission may prosecute fraud through the administrative violation process by assessing fines up to \$10,000 and restitution as authorized by the Texas Workers' Compensation Act and the Texas Insurance Code.